Claim No. CFI 107/2021

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) ALEXANDER REUTER
(2) CARLO PIANESE
(3) ANDRE BLEDJIAN

Claimants

and

(1) WELLNESS UNITED INC
(2) JACOB LOGOTHETIS
(3) ANGELA TUROVSKAYA

Defendants

Claim No. CFI 108/2021

(1) ALEXANDER REUTER
(2) ANDRE BLEDJIAN

Claimants

and

(1)WELLNESS UNITED INC
(2)JACOB LOGOTHETIS
(3)ANGELA TUROVSKAYA

Defendants

REASONS FOR THE ORDER OF H.E. JUSTICE NASSIR AL NASSER DATED 4 JULY 2023

SCHEDULE OF REASONS

1. This is the Defendants' Application CFI-107-2021/5 for security over costs against the Claimants requesting the Claimants to pay an amount of AED 4,226,250 to the Court. The Application sought by the First, Second and Third Defendants which are identical Defendants in claim no. CFI-108-2021, in which I will be referring to in this Order as the Defendants.

2. The Defendants filed an Application No. CFI-108-2021/5 dated 16 March 2023 for security over costs against the Claimants, requesting the Claimants to pay an amount of AED 4,226,250 to the Court

(both referred to as the "Applications")

3. My reasons for dismissing the Applications in seeking security over costs are set out below. I should make it clear that in addition to the oral submissions made at the Hearing, I have read carefully through the evidence filed by both parties. Therefore, if I may omit some arguments or legal authorities relied on by either the Claimant or the Defendants, this does not mean that I have overlooked it. During the course of this Order, I will be referring to First, Second and Third Defendants in this Order as the "Defendants".

4. The Claimants in Claim no. CFI-107-2021 are the following:

(a) Alexander Reuter (herein "the First Claimant"), an individual residing villa 20, Courtyard Aldea 9, the Villa, Dubailand, Dubai, UAE.

(b) Carlo Pianese (herein "the Second Claimant"), an individual residing Villa 15, Al Shahab 2, Dubai Marina, Dubai, UAE.

(c) Andre Bledjian (herein "the Third Claimant"), an individual residing 7 Eginis, Athens, Greece.

5. The Claimants in Claim no. CFI-108-2021 are the First and Third Claimants of CFI107-2021, therefore, I will refer to them as listed above.

CFI-107-2021

6. By way of background, the Claimants entered into a written convertible loan Agreement (CLA 3) with the First Defendant on 15 February 2018. Pursuant to the terms of CLA 3, the parties agreed to roll over and consolidate loans that had been provided by each Claimant to the First Defendant. These loans were interest bearing and each Claimant was entitled, on maturity, to be repaid the principal amount together with accrued interest where they had elected not to convert the debt into equity.

7. On 15 February 2018, the Claimants entered into a Deed of Guarantee with the Second and third Defendants (the "Guarantee"). CLA 3 provides that the loans from the Claimants to the First Defendant were to be secured by inter alia the Guarantee. Pursuant to clause 2.1 of the Guarantee, the Second and Third Defendants "as primary obligors, jointly and severally, unconditionally and irrevocably (i) guarantee to the Claimants the due and punctual performance of, and compliance with, all covenants, undertaking, representations, warranties, indemnity obligations and any and all other obligations of the First Defendant under or otherwise arising out of or in connection with CLA 3."

8. The loans matured on 31 January 2019. They were due to be repaid where none of the Claimants elected to convert the debt into equity.

9. The Claimants in CFI-107-2021 claim the debt and/or breach of contract arising from the First Defendant's failure to repay the outstanding amounts due under the CLA 3 and from the Second and Third Defendants failure to pay, under the Guarantee. The amount pursued by the Claimants in CFI-107-2021 totals to the sum of USD 741,163.18 which consists of the following:

(a) The First Claimant: USD 291,442.42 being the principal amount and accrued interest due as of 31 January 2019 and interest from 1 February 2019 until judgment at the contractual rate of 6% (accruing at the rate of USD 47.91);

(b) The Second Claimant: USD 149,955.22 being the principal amount and accrued interest due as of 31 January 2019 and interest from 1 February 2019 until judgment at the contractual rate of 6% (accruing at the rate of USD 24.65); and

(c) The Third Claimant: USD 299,765.54 being the principal amount and accrued interest due as of 31 January 2019 and interest from 1 February 2019 until judgment at the contractual rate of 6% (accruing at the rate of USD 49.28).

CFI-108-2021

10. By way of background, the First and Third Claimants and the First and Second Defendants entered into a written convertible loan Agreement (the "Bridging Loan Agreement") on 24 October 2018. Pursuant to the terms of the Bridging Loan Agreement, the First and Third Claimants collectively made available to the First Defendant loans of USD 200,000. These loans were interest bearing and the First and Third Claimants were entitled, on maturity, to be repaid the principal amount together with accrued interest where they had elected not to convert the debt into equity.

11. A Deed of Guarantee entered into on 24 October 2018 by the First and Third Claimants and the Second and Third Defendants (the "108 Guarantee"). The Bridging Loan Agreement provides that the loans from the First and third Claimants to the First Defendant were to be secured by inter alia the 108 Guarantee. Pursuant to clause 2.1 of the 108 Guarantee, the Second and Third Defendants "as primary obligors, jointly and severally, unconditionally and irrevocably (i) guarantee to the First and Third Claimants the due and punctual performance of, and compliance with, all covenants, undertaking, representations, warranties, indemnity obligations and any and all other obligations of the First Defendant under or otherwise arising out of or in connection with Bridging Loan Agreement."

12. The loans matured on 31 January 2019. They were due to be repaid where none of the First and Third Claimants elected to convert the debt into equity.

13. The Claimants in CFI-108-2021 claim the debt and/or breach of contract arising from the First Defendant's failure to repay the outstanding amounts due under the bridging loan Agreement and from the Second and Third Defendants failure to pay, under the 108 Guarantee. The amount pursued by the Claimants in CFI-108-2021 totals to the following:

(a) The First Claimant: USD 103,286.67 being the principal amount and accrued interest due as of 31 January 2019 and interest from 1 February 2019 until judgment at the contractual rate of 12% (USD 50,596.32 as of 2 March 2023 and accruing at the rate of USD 33.96)

(b) The Third Claimant: USD 103,286.67 being the principal amount and accrued interest due as of 31 January 2019 and interest from 1 February 2019 until judgment at the contractual rate of 12% (USD 50,596.32 as of 2 March 2023 and accruing at the rate of USD 33.96)

14. The Defendants filed their Applications on the basis that they are unaware of the Claimants' assets in the UAE and that the Third Defendant is based in Greece and not a resident of the UAE. Therefore, the Defendants anticipate facing severe difficulties and impediments in ascertaining and locating assets of the Third Claimant for the purpose of the execution of a final judgment and recovering its costs for defending this litigation.

15. The Defendants provided that if they were to defend the claim to conclusion, the costs for such defence are estimated to be AED 4,226,250.

The Defendants' submission

16. The Defendants submit the following:

Rules of the DIFC Courts ("RDC") 25.101 provides that:

"The court may make an order for security for costs under Rule 25.100 if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order and one or more of the conditions in Rule 25.102 applies.

25.102 provides that:

The conditions are:

(1) The Claimant is resident out of the UAE;

(2) The Claimant is a company or other body (whether incorporated inside or outside the DIFC) and there is reason to believe that it will be unable to pay the Defendant's costs if ordered to do so;

(3) The Claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;

(4) The Claimant failed to give his address in the claim form, or gave an incorrect address in that form;

(5) The Claimant is acting as a nominal Claimant, other than as a representative claimant under part 20, and there is reason to believe that he will be unable to the Defendant's costs if ordered to do so;

(6) The Claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him. "

17. The Defendants submit that they have no information whatsoever as to the whereabouts of the Claimants business operations and/or its assets and that the Third Claimant resides in Greece, accordingly, there are strong and valid concerns that in the event of a favourable costs order, the Defendants will face severe impediments in its execution.

18. The Defendants believe that the conditions in RDC 25.102 are satisfied in order for the Courts to allow this security Application under rule 25.97 by the Defendants.

The First Claimant's submission

19. The First Claimant confirms that he is a resident of the UAE and provided his full address in his witness statement.

20. The First Claimant submits that the Defendants issued the Applications without first making enquiries to the Claimants, as to whether they are residents of the UAE or not. the Defendants also failed to enquire about what the First Claimant's position would be on any application for security for costs.

21. The First Claimant adds that it was clearly stated in the Claim Form and he is both a resident of the UAE and located in Dubai. Therefore, RDC 25.102(1) is not satisfied.

22. The First Claimant in his witness statement confirms that he has been living in Dubai since 2007. He is a golden visa holder which is valid until 2031. He lives here with his wife and children who attend school in Dubai.

23. The First Claimant also confirms that he maintains bank account in the UAE with HSBC. He owns two properties in the UAE and have interests in a number of UAE based companies, including Viva insurance brokers LLC (a company incorporated and registered with Dubai Economic Department), Denovo partners (DIFC) Limited (a company incorporated and registered in the DIFC) and Enerwhere limited (a company incorporated and Registered in the ADGM).

The Second Defendant's submission

24. The Second Claimant confirms that he is a resident of the UAE and provided his full address in his witness statement.

25. The Second Claimant submits that the Defendants issued the Applications without first making enquiries to the Claimants, as to whether they are residents of the UAE or not. the Defendants also failed to enquire about what the Second Claimant's position would be on any application for security for costs.

26. The Second Defendant submits that the third Defendant alleged that "they have no information whatsoever as to the whereabouts of the Claimants business operations and/or its assets" however, in her first witness statement dated 18 November 2022, the Third Defendant stated that "at all material times, Claimant No. 2 [i.e Carlo Pianese] was (and still is) a partner with Tribonian Law Advisors ("TLA"), a Law firm with offices in Dubai, Beirut and Riyadh".

27. The Second Defendant confirms in his Second witness statement dated 29 March 2023 that he is a resident of the UAE and based in Dubai and his current UAE visa is valid until February 2024. He also adds that he lives here with his wife and child who will start nursery in September 2023. He also confirms that he is an English Qualified Lawyer working for a firm in Dubai, Tribonian Law Advisors, that he co-founded in 2011 and where he works as an Employee and partner of the firm.

28. The Second Defendant also provided that he maintains bank accounts in the UAE, including with HSBC and Standard Chartered Bank and own two real estate properties in Dubai.

The Third Claimant's submission

29. The Third Claimant submits it is correct that he resides in Greece.

30. The Third Claimant also submits that he understands that one of the conditions of RDC 25.102 must apply in order for the court to order security for costs, however, he submits that it is not automatic that the court will make such an order simply because such condition is met. Rather, the court must also be satisfied, having regard to all the circumstances of the case.

31. The third Claimant submits that he is the ultimate beneficial owner of a property in Dubai, which he has owned since 2017. The property is an apartment, which is held by Ynker Investment Limited of which he is the sole owner. The Third Claimant adds that the property was purchased for AED 2.95 million.

32. The Third Claimant adds that the Defendant purported a cost estimate of USD 1,150,812.52 for a simple debt claim, which has the combined value of USD 741,163.18, is entirely unreasonable and disproportionate.

Findings

33. The underlying issues that arise out of these Applications are the following: to determine whether there is a reasonable belief that the Claimants' will not meet an adverse cost order or any of the conditions set out in RDC 25.102.

34. Turning to the issue which deals with the conditions set out under RDC 25.102 on which the Defendants may apply for security for costs order if they were able to show that one or more of the conditions are applicable to the facts of the case. The Defendants rely on condition 25.102(1) which stipulates that "the Claimants' are not residents of the UAE".

35. The Defendants' failed to seek the Claimants' view prior to filing Security for cost application. Further, it could be suggested that if the Claimants were requested to provide their view prior to filing the Applications, probably, they would have provided the required information as they have in response to the Applications.

36. The First and Second Claimant are residents of the UAE and owners of properties and have interest in incorporations in the UAE. Therefore, the Defendants' failed to satisfy the Courts with any of the conditions listed in RDC 25.102

37. In relation to the Third Claimant, although he is a resident in Greece, the Third Claimant provided information that he is the sole owner of a property since 2017. Again, the Defendants failed to satisfy the Courts on how execution of a cost order (if awarded) will be difficult on the Third Claimant.

38. Therefore, I dismiss the Defendants' Applications.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 18 September 2023
At: 12pm